

Nicolas Cassis
Chief Executive Officer
Tiscali USA, Inc.
1000 N. West Street
Suite 1200
Wilmington, Delaware 19801

May 13, 2021

Licensee/Applicant: Tiscali USA Inc.
Waiver and Refund Request: Late Payment Penalty
Disposition: Denied (47 U.S.C. § 159(c) and (d),¹ 47
CFR §§ 1.1160, 1.1166)
Fee: Fiscal Year (FY) 2016 Regulatory Fee Late
Payment Penalty
Date Request Filed: November 29, 2016
Date Regulatory Fee Paid: November 8, 2016
Date Late Payment Penalty Paid: November 8, 2016
Fee Control No.: RROG-2016-16286

Dear Mr. Cassis:

This responds to the request of Tiscali USA, Inc. (Tiscali) for a waiver and refund of the penalty it paid for late payment of its Fiscal Year (FY) 2016 regulatory fees (the Request).²

Under 47 U.S.C. § 159 and the Commission's implementing rules, we are required to assess and collect regulatory fees to recover the costs of the Commission's regulatory activities,³ and when the required fee payment is received late or it is incomplete, to assess a penalty equal to twenty-five percent (25%) of the amount of the fee which was not paid in a timely manner.⁴

Each year, the Commission establishes the final day on which payment must be received before it is considered late, i.e., a deadline after which the Commission must assess charges that include the statutory late payment penalty required by 47 U.S.C. § 159(c) and 47 CFR § 1.1164. The deadline for paying FY 2016 regulatory fees was September 27, 2016.⁵ Tiscali did not pay its FY 2016 regulatory fee until November 8, 2016.⁶

Tiscali now requests that we waive and refund the twenty-five percent (25%) penalty assessed against it. According to the Commission's records, Tiscali attempted unsuccessfully to pay its FY 2016 regulatory fee via debit voucher on September 9, 2016. In its Request, Tiscali acknowledges that it knew at least a week before the September 27, 2016 payment deadline that the Commission had not received a

¹ 47 U.S.C. § 159(c) and (d) are now codified at 47 U.S.C. § 159A(c) and (d).

² Letter from Jackie, Tiscali USA, Inc., 1000 N West St., Suite 1200, Wilmington, DE 19801 to Marlene H. Dortch, Secretary, Federal Communications Commission (Nov. 7, 2016, *rec'd* Nov. 29, 2016) (Request).

³ 47 U.S.C. § 159(a); 47 CFR § 1.1151.

⁴ 47 U.S.C. § 159(c)(1), now codified at 47 U.S.C. § 159A(c); 47 CFR § 1.1164.

⁵ See *Effective Date of FY 2016 Regulatory Fees and Multi-Year Wireless Fees*, Public Notice (Sept. 27, 2016), <https://www.fcc.gov/document/effective-date-fy-2016-regulatory-fees>.

⁶ Tiscali also paid the penalty plus accrued interest on Nov. 8, 2016.

payment that it was responsible for monitoring its bank account to ensure timely payment to the Commission. Tiscali offers no explanation as to payment did not occur until November 8, 2016.⁷

When we evaluate such matters, we consider whether the Request establishes the existence of bank error⁸ or presents legal grounds or clear mitigating circumstances⁹ to waive collection of the penalty payments.

The Request does not present valid grounds for relief. The penalty required by 47 U.S.C. § 159(c) and 47 CFR § 1.1164 is not limited to situations where the failure to pay was knowing or willful, but includes mistakes made by and circumstances within the control of the regulatee, as was the case here. Tiscali provided no evidence of bank error, and we are left to conclude that the only error made in this case was Tiscali's failure to ensure payment of the fee by the September 27 deadline. Accordingly, Tiscali's Request is denied.

If Tiscali has any questions concerning this matter, please call the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,

A handwritten signature in black ink that reads "James Lyons". The signature is written in a cursive, slightly slanted style.

James Lyons
Deputy Chief Financial Officer

⁷ Request. We assume that the Request's reference to October 25 and the first week of November are typographical errors and that Tiscali intended to say August 25 and the first week of September, consistent with the other statements made in the Request.

⁸ 47 CFR § 1.1164; *see also NTT America, Inc.*, Memorandum Opinion and Order, 21 FCC Rcd 8088 (2006).

⁹ *See Sitka Broadcasting Co., Inc.*, Memorandum Opinion and Order, 70 FCC 2d 2375, 2378, para. 6 (1979), *citing Lowndes County Broadcasting Co.*, Memorandum Opinion and Order, 23 FCC 2d 91 (1970) and *Emporium Broadcasting Co.*, Memorandum Opinion and Order, 23 FCC 2d 868 (1970); *see also NextGen Telephone* (OMD, Apr. 22, 2010); *Istel, Inc.* (OMD, Apr. 22, 2010).